

THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JUAN DE LA CRUZ ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. 4740. November 18, 1908*

Ponente: CARSON, J.

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At about 10 o'clock on the night of the 30th of October,. 1907, a band, composed of not less than five persons, two of whom, the appellants in this case, were armed with revolvers, one with a bolo, and the others with clubs, entered the town of Jaen, where they met one Fortunato Jimenez who, with his wife and sister, was on his way to visit a neighbor's house,. With threats of violence the band obliged Jimenez and his party to return to his house, and upon arriving there, Timoteo Dizon, one of the band, went up into the house with Jimenez, and threatening him with a revolver, demanded P500. Jimenez had no money, but was compelled to give up his watch, and at that moment, the appellant Pio Yesma entered the room, and demanded that, if Jimenez would not give the P500, he give at least whatever money he had. Jimenez insisted that he had no money and the robbers left the house.

Just before the band encountered Jimenez and his party, they had captured another resident of the town, named Delfin Esquivel, who was compelled at the point of a revolver to accompany them together with Jimenez and his party, and was left downstairs under guard together with the women of Jimenez's party, when Jimenez himself was taken upstairs, and when the band left the house, was thrust inside together with the women, and ordered to stay there and to make no noise.

A short time thereafter, the Constabulary forces surprised and attacked the band, killing Dizon and wounding another member of the band. The watch was found upon Dizon's body, and his corpse was identified by Jimenez as that of the person who had first gone up into the house and demanded P500.

The appellants were convicted of the crime of robo en cuadrilla, (robbery in an armed band), and the facts above set out, which were conclusively established by the testimony of the witnesses at the trial, fully established their guilt, beyond a reasonable doubt, and we find no error in the proceedings prejudicial to the rights of the accused.

Counsel contends that the judgment of the trial court should be reversed because, as he alleges, first, it does not appear from the evidence that more than three members of the band were armed, and consequently, if the crime of robbery was committed at the time and place set out in the information, it was simple robbery and not robo en cuadrilla (robbery in an armed band); second, granting that the crime of simple robbery was proven, the evidence does not sustain a finding that the appellant Juan de la Cruz was in any wise connected therewith, or that the appellant Pio Yesma took part therein as a principal; third, the evidence of record fails to establish that the thing taken had a specific value, that being one of the essential requisites of the crime of robbery; and, fourth, the trial court erred in admitting ante-mortem statements made by Timoteo Dizon in the presence of appellants, and at the time uncontradicted by them, for the purpose of identifying the appellants and establishing their participation in the commission of the crime.

The first assignment of error can not be maintained, because the evidence of record, and especially the testimony

of the witnesses Fortunato Jimenez and Delfin Esquivel, clearly establishes the fact that the band which committed the crime was composed of more than three persons, two of whom carried revolvers, a third a bolo, the others being armed with clubs. Counsel seems to think that the members of the band carrying clubs can not be said to have been armed in the sense in which that word is used in the definition of the crime of robo en cuadrilla (robbery in an armed band); but we hold that where a robbery is committed by a band, some of whom are armed with revolvers, some with bolos, and others with clubs (garrotes) the clubs are arms which, in the hands of the members of such a band, may be as dangerous to the life of one who would resist the depredations of the band as are revolvers or bolos, and therefore, those carrying them are armed members of the band in the sense in which that term is used in the code in defining a cuadrilla or armed band.

We are of opinion also that the record clearly establishes the guilt of both Juan de la Cruz and Pio Yesma, as principals, in the commission of the crime with which they are charged. The testimony of Jimenez positively identified Yesma as the second person who followed him into his house, threatened him with a revolver and demanded the surrender of any money he might have; Esquivel positively identified both Yesma and De la Cruz as members of the band, who captured him and brought him together with Jimenez and his family, to the house of Jimenez; and the testimony of both these witnesses, together with the testimony of other witnesses who saw the band when it entered the house, clearly establishes the fact that all the band operated together, and that, while some of the members entered the house, the others stayed below on guard, thus aiding and abetting, as principals, those who entered and actually took possession of the stolen property. (U. S. vs. Ancheta, 1 Phil. Rep., 165; U. S. vs. Abelinde, 1 Phil. Rep., 568; U. S. vs. Santos, 2 Phil. Rep., 453.)

The third assignment of error is also completely refuted by an examination of the record. The owner of the stolen watch testified that he did not know exactly what its value was, but that he had paid P8 for it. This testimony was clearly sufficient to establish the fact that it had some value; and indeed, since the crime of robbery is complete when all the other requisites set out in the definition in the code concur, if the property taken has even the smallest value, we think we would be justified in holding that the watch taken had sufficient value to sustain a conviction of robbery, unless it affirmatively appeared that it was absolutely worthless, for without testimony to the contrary a watch, which the owner valued enough to carry, may fairly be presumed to have some value, however insignificant the value may be.

In regard to the fourth assignment of error, we agree with counsel for the appellant that the trial court erred in admitting the ante-mortem statements of Timoteo Dizon, for the purpose of identifying the appellants as members of the band. The ante-mortem statements admitted by the trial court were an alleged extra-judicial declaration made by the, bandit Timoteo Dizon, a few hours before his death, wherein he confessed his guilt of the robbery on the night in question, and stated that the appellants were members of the band. The evidence further discloses that this confession was made to the provincial fiscal and an officer of the Constabulary, and that, although the appellants were there present, under arrest, charged with the commission of the crime and heard the dying man charge them with being members of the band, they kept silent and did not attempt to deny the charge.

Section 15 of General Orders, No. 58, provides that in all criminal prosecutions the defendant shall be entitled to be confronted by, and to cross-examine the witnesses against him; and while there are some apparent exceptions to this rule in regard to hearsay testimony, the dying declaration under consideration can not be said to fall under any of these so-called exceptions.

Dying declarations or affirmations, made not under the sanction of an oath but of a solemn sense of impending death, are sometimes accepted as evidence, though made extra-judicially and without cross-examination, the declarant not being regarded as a witness whom the defendant is entitled to meet face to face; but the admission of such declarations has always been strictly limited to criminal prosecutions for homicide or murder, and must

proceed from the very person alleged to have been killed. (Thompson vs. Sted., 24 Ga., 297; Gibson vs. C, 2 Va. Cas., 111; Hill vs. C., 2 Grat., 594; Reg. vs. Whitworth, 1 Fost. & R, 382.) Manifestly, therefore, the ante-mortem statement in this case is not admissible as a "dying declaration."

So the acts or declarations of a conspirator are sometimes admissible as evidence against his co-conspirators, the acts or declarations of each of the conspirators being regarded as the acts or declarations of all. But the ground for the admission of such evidence clearly requires that such acts or declarations must have been made during the progress of the conspiracy and in pursuance of the ends for which it had been formed, and not after the transaction had ended; and further, before such evidence can be admitted it must appear by competent evidence that the conspiracy actually existed and that the accused were members of the conspiracy. (Bishop's Criminal Procedure, Vol. I, sec. 1248, and many cases there cited.) The declaration under consideration was made after the transaction to which it referred was at an end, was not made in pursuance of the conspiracy, and was clearly inadmissible for the purpose of proving that the defendants were co-conspirators with the declarant.

It is suggested, however, that while the statements in question were inadmissible as proof of the truth of their contents, they might have been received for the purpose of showing that, when they were made in the presence of the defendants, they made no attempt to deny them, and by their silence implicitly admitted their truth. We do not doubt that silence may sometimes be equivalent to the admission of the truth of statements made by one person in the presence and hearing of another, when these statements have been made under such circumstances that the natural impulse of an innocent person hearing such statements would impel him to deny their truth if they were false. But it must appear that there was a proper opportunity for reply and that the surroundings were such as to render a denial expedient and proper; and the right of a defendant in all criminal prosecutions "to be exempt from testifying against himself clearly prohibits any inference of guilt from the silence of an accused person who has been arrested and charged with crime.

The statements in question were made after defendants had been arrested, and in the course of an official investigation which was being conducted by the provincial fiscal, and under these circumstances, proof of the fact that the statements were made in the presence and hearing of the defendants, and that they kept silence and failed there and then to deny their truth, could in no event support the inference that by thus keeping silence they implicitly admitted the truth of the facts alleged by the declarant. We think, however, that while the admission of this testimony was error, it was error without prejudice to the rights of the accused, because, as we have said before, the properly admitted testimony of record fully and conclusively establishes the commission of the crime with which the appellants were charged, and their identity as members of the band who committed it.

The judgment of the trial court should be and is hereby affirmed, with the costs of this instance against the appellants. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, Willard, and Tracey, JJ., concur.

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